

REMARKS

Claims 39-51 are pending and have been rejected. Claims 39-51 remain in the case.

Claims 39-50 are rejected under Section 103(a) based on Douglas *et al.* (US 6,039,688) in view of Nicol *et al.* (US 5,287,448). The examiner states that:

Douglas *et al.* describe a first level of service... The searching of the database in this case is the searching of the record in the computer system containing user's number of accumulated points and identifying the accumulated points, as well as details of the rewards system... Douglas differs in that it does not determine a level of user sophistication, or tailor the resulting information based on that sophistication. However, col. 8, lines 35-46 of Nicol *et al.* describe a help menu feature added to a user interface, in which a user enters their relative level of sophistication, such as "novice", "moderate", or "experienced". The search results then presented to the user in response to an information request is then specifically tailored to the input sophistication. A more experienced user will receive less information and a less experienced user will receive more information. Accordingly, it would have been obvious to one of ordinary skill in the art to modify Douglas *et al.* to incorporate a help menu at any one or all of its user interfaces for input of user sophistication so as to tailor the specific output results to the user's level of sophistication.

Even assuming, *arguendo*, that it would have been obvious to incorporate a help menu at one or all of the user interfaces of Douglas *et al.* so as to tailor output results to the level of user sophistication, the result still would not be the invention which is recited in claim 39. Claim 39 recites that in the case of a first level of service (the examiner finding that Douglas describes a first level of service), user sophistication is determined "*based on the user inquiry*." This feature is described in the specification:

For example, a simple question such as "What is leukemia?" would generate a relatively simple level 1 response. In this case the processor would simply access a database of medical definitions and provide the appropriate response to the user. In contrast, a more sophisticated question such as one that describes symptoms in detail and uses extensive technical language would be interpreted by the processor as coming from a sophisticated user and could generate a more sophisticated response.

The examiner proposes to substitute a feature from Nicol, in which the user selects a sophistication level from a pull-down menu, into the behavior modification program of Douglas.

Selection of sophistication level by the user from a pull-down menu is quite different from the situation in which the processor assesses a user inquiry and “determine[es] a user sophistication *based on the user inquiry*.” In one case, sophistication level is determined *by the processor* based on the user’s inquiry, while in the other case, sophistication level is determined *by the user*. This feature of determining sophistication level *based on user inquiry* is nowhere to be found in the combination of Douglas and Nicol. Even when the two references are combined as in the rejection, the result is not the same as that which is set forth in claim 39.

Moreover, it is noted that Douglas is a therapeutic behavior modification program, compliance monitoring, and feedback system having a series of milestones for an individual to achieve lifestyle changes. In making the present rejection, the examiner proposes to modify the accumulated points output in Douglas based on the user’s sophistication level. It is difficult to understand how this would operate. Would two users that have accumulated the same number of points be told that they actually have accumulated differing numbers based on their sophistication level? If so, this would be contrary to the purpose of the Douglas program, which is to provide milestones by which users can judge their progress in achieving certain goals, such as weight loss or exercise levels.

In its decision, the Board noted that Douglas arguably suggests the need for different levels of service for different categories of users, citing the disclosure that members in the wellness group may not need all the features available to members of the clinical group. However, here again there is no suggestion that level of service should be *based on user inquiry*. A user’s status as “wellness group” or “clinical group” in the Douglas system is inputted by the physician or case advisor, and is not based on “user inquiry.” Hence, this disclosure in Douglas also fails to suggest the invention as presently claimed when combined with Nicol. No *prima facie* case of obvious of claim 51 exists based on Douglas *et al.* (US 6,039,688) in view of Nicol *et al.* (US 5,287,448) , and reconsideration and withdrawal of this ground of rejection is respectfully requested.

Claim 51 is rejected under Section 103(a) based on Douglas *et al.* (US 6,039,688) in view of Official Notice. The Examiner takes Official Notice that the concept of having a physician ask a patient to undergo surgery is very well known in the context of physician-patient interaction, and that it would have been obvious to modify Douglas to include a recommendation to the remote patient that the patient undergo surgery so as to improve the patient’s health. However, such recommendation is not “administering treatment” and it is not the transmission of signals over a network that relate to the actual performance of remote surgery, as presently claimed. No *prima*

facie case of obvious of claim 51 exists based on Douglas *et al.* (US 6,039,688) in view of Official Notice, and reconsideration and withdrawal of this ground of rejection is also requested.

If there are any problems with this response, or if the examiner believes that a telephone interview would advance the prosecution of the present application, Applicant's attorney would appreciate a telephone call. In view of the foregoing, it is believed none of the references, taken singly or in combination, disclose the claimed invention. Accordingly, this application is believed to be in condition for allowance, the notice of which is respectfully requested.

Respectfully submitted,

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DATE

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